

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON**

<b>IN RE ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION</b>	<b>Master File No. 2:12-MD-02327 MDL 2327</b>
<b>THIS DOCUMENT RELATES TO: WAVE 5 CASES</b>	<b>JOSEPH R. GOODWIN U.S. DISTRICT JUDGE</b>

**JOINT MOTION FOR EXTENSION OF *DAUBERT* DEADLINES  
WITH RESPECT TO PLAINTIFFS' EXPERT WITNESS SCOTT A. GUELCHER, PH.D.**

Plaintiffs and Defendants Ethicon, Inc. and Johnson & Johnson (collectively, "Ethicon"), by their respective counsel, submit this Joint Motion for Extension of *Daubert* Deadlines with respect to Plaintiffs' Expert Witness Scott A. Guelcher, Ph.D. ("Joint Motion"). In support of this Motion, the parties state the following:

1. In relevant part, Pretrial Order # 248 provides that the close of discovery for Wave 5 cases is July 19, 2017, and that the parties must file any Wave 5 *Daubert* motions by August 15, 2017; any responses to such motions by August 29, 2017; and any replies in support of such motions by September 5, 2017.

2. Both Pretrial Order # 248 and the Federal Rules of Civil Procedure permit the Court to modify a scheduling order for good cause. *See* PTO # 248; Fed. R. Civ. P. 16(b)(4); LR Civ. P. 16.1(f) (scheduling order may be modified for good cause by order).

3. Here, good cause exists to grant the parties' Joint Motion for an extension of *Daubert* deadlines with respect to Dr. Guelcher—who is a general causation expert witness for Plaintiffs' in this litigation. *See, e.g., Dawn Sequino, et al. v. Ethicon, Inc., et al.*, Order Granting

Ethicon's Unopposed Mot. for Ext. of Time for Serving Case-Specific Expert Report and Filing of Daubert Mots. Aug. 11, 2016 [ECF No. 41].

4. On July 12, 2017, Plaintiffs served a Notice of Videotaped *De Bene Esse* Testimony of Scott Guelcher, Ph.D. [ECF 4124]. Plaintiffs' Notice indicates that "the *de bene esse* testimony of Dr. Scott Guelcher will be taken for all purposes in Wave 5," as well as "any and all purposes permitted by the Federal Rules of Civil Procedure, the rules of the MDL Court, and any other state or local rules that apply to this action." *Id.*

5. On July 14, 2017, Ethicon filed a Motion for Protective Order Precluding *De Bene Esse* Deposition of Plaintiffs' Expert Witness Scott A. Guelcher, Ph.D., and supporting memorandum of law. *See* [ECF 4132, 4233].

6. On July 15, 2017, the parties agreed to postpone both the Wave 5 discovery deposition and Plaintiffs' *De Bene Esse* deposition of Dr. Guelcher pending a ruling on Ethicon's motion for protective order. *See* Ex. A, Ed Wallace 7/15/2017 8:31 AM Email.

7. On July 24, 2017, Plaintiffs filed a Response in Opposition to Defendants' Memorandum of Law for Protective Order and Plaintiffs' Motion for a *De Bene Esse* Deposition of Dr. Guelcher. *See* [ECF 4226].

8. In so doing, the parties agreed that (i) Ethicon would not produce its materials science experts for Wave 5 discovery depositions until after the completion of Dr. Guelcher's Wave 5 discovery deposition; and (ii) Ethicon would be afforded "adequate time to file any Daubert motions" in Wave 5. *See id.*

9. As of the date of filing of this Joint Motion, no order on Ethicon's Motion for Protective Order has been entered.

10. For this reason, and pursuant to the parties' July 15, 2017 agreement, the parties request that the Court enter an order permitting (i) Ethicon to file any *Daubert* motion regarding Dr. Guelcher within 14 days of the date on which his Wave 5 discovery deposition takes place; Plaintiffs to file any responsive pleading within 14 days of the date on which Ethicon files said motion; and Ethicon to file any reply in support of said motion within 7 days of the filing of any responsive pleading.

11. Upon entry of an order regarding Ethicon's Motion for Protective Order, the parties will proceed with any deposition permitted under the terms of the order on the earliest mutually agreeable date, or by any such date that the order specifies.

12. This extension is not sought for reason of delay or for any other improper purpose. As Dr. Guelcher functions solely as a general causation witness in this litigation, this extension will not affect any of the remaining deadlines under PTO # 248.

WHEREFORE, the parties respectfully request that this Court grant this Joint Motion and enter an order modifying the deadlines for any *Daubert* motion, response, and reply regarding Dr. Guelcher as set forth above.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to CM/ECF participants registered to receive service in this MDL.

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